

No. 76-693

Supreme Court, U. S.

FILED

JAN 4 1977

MICHAEL RODAN, JR., CLERK

**In the Supreme Court of the United States**

OCTOBER TERM, 1976

---

EARL C. BERGER, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

---

*ON PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS FOR  
THE DISTRICT OF COLUMBIA CIRCUIT*

---

**MEMORANDUM FOR THE UNITED STATES  
IN OPPOSITION**

---

ROBERT H. BORK,  
*Solicitor General,  
Department of Justice,  
Washington, D.C. 20530.*

---

In the Supreme Court of the United States

OCTOBER TERM, 1976

---

No. 76-693

EARL C. BERGER, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

---

*ON PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS FOR  
THE DISTRICT OF COLUMBIA CIRCUIT*

---

MEMORANDUM FOR THE UNITED STATES  
IN OPPOSITION

---

The petition for a writ of certiorari was filed out of time. The judgment of the court of appeals in this civil matter was entered on July 1, 1976 (Pet. App. F), and a petition for reconsideration and for rehearing *en banc* was denied on August 18, 1976 (Pet. App. H). The time for filing a petition for a writ of certiorari was not extended and, accordingly, the 90-day period provided in 28 U.S.C. 2101(c) for petitioning in civil cases expired on November 16, 1976. The petition was filed on November 17, 1976 (a Wednesday).

The time limit imposed by 28 U.S.C. 2101(c) is jurisdictional. *Toledo Scale Co. v. Computing Scale Co.*, 261 U.S. 399, 417-418. Accordingly, the petition should be denied.

Respectfully submitted,

ROBERT H. BORK,  
*Solicitor General.*

JANUARY 1977.